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International Covenant on Civil and Political Rights

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Human Rights Committee

Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2364/2014*, **

Communication submitted by:	Sarita Devi Sharma, Bijaya Sharma Paudel and Basanta Sharma Paudel (represented by counsel, Philip Grant, of Track Impunity Always)
Alleged victim:	The authors
State party:	Nepal
Date of communication:	20 December 2013
Document references:	Decision taken pursuant to rule 97 of the Committee's rules of procedure, transmitted to the State party on 21 March 2014
Date of adoption of Views:	6 April 2018
Subject matter:	Enforced disappearance
Procedural issues:	Failure to sufficiently substantiate allegations; exhaustion of domestic remedies
Substantive issues:	Right to life; prohibition of torture and cruel and inhuman treatment; right to liberty and security of person; respect for the inherent dignity of the human person; recognition as a person before the law; right not to be subjected to arbitrary or unlawful interferences with one's family life; right to be protected as a family; right to special protection as a minor and right to an effective remedy.
Articles of the Covenant:	2 (3), 6, 7, 9(1–4), 10 (1), 16, 17, 23 (1) and 24 (1)
Articles of the Optional Protocol:	2 and 5 (2)(b)

* Adopted by the Committee at its 122nd session (12 March-6 April 2018).

** The following members of the Committee participated in the examination of the present communication: Yadh Ben Achour, Ilze Brands Kehris, Ahmed Amin Fathalla, Christof Heyns, Yuji Iwasawa, Ivana Jelić, Bamariam Koita, Duncan Laki Muhumuza, Photini Pazartzis, Mauro Politi, José Manuel Santos Pais, Yuval Shany and Margo Waterval.

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1.1 The authors of the communication are Sarita Devi Sharma, her husband Bijaya Sharma Paudel and their eldest son, Basanta Sharma Paudel, three Nepalese nationals born on 24 February 1979, 14 June 1968 and 30 October 1995, respectively. They claim that the State party has violated their rights under articles 6, 7, 9 (1–4), 10 (1) and 16 of the International Covenant on Civil and Political Rights, read alone and in conjunction with article 2 (3) of the Covenant, regarding Ms. Sharma; under articles 7, 17 and 23 (1), read alone and in conjunction with article 2 (3), regarding Bijaya Sharma Paudel; and articles 7, 17, 23 (1) and 24 (1), read alone and in conjunction with article 2 (3) of the Covenant, with regard to Basanta Sharma Paudel. The authors are represented by counsel.

1.2 On 18 June 2014, the Committee, acting through its Special Rapporteur on new communications and interim measures, decided to examine the admissibility of the communication together with the merits, in accordance with rule 97 of the Committee's rules of procedure.

The facts as submitted by the authors

2.1 In February 1996, the Maoist Communist Party of Nepal launched an armed rebellion against the Government that rapidly spread throughout the country, producing a decade-long armed conflict. The Government declared a state of emergency on 26 November 2001 and issued the Terrorist and Disruptive Activities (Prevention and Punishment) Act, which suspended a number of dirigible rights enshrined in the Covenant,[1] in accordance with its article 4, and granted a broad range of powers to the Royal Nepal Army to arrest individuals on the basis of suspicion of involvement in terrorist activities and to keep them in detention for up to 90 days without charge. Serious human rights violations, such as arbitrary detentions, enforced disappearances, torture and extrajudicial killings, were documented during that period by different United Nations and non-governmental sources, even after the state of emergency was lifted on 20 August 2002.

2.2 According to the Human Rights Council Working Group on Enforced and Involuntary Disappearances, in 2003 and 2004, Nepal had the largest number of reported cases of enforced disappearance.[2] In its report on its 2004 mission to Nepal, the Working Group referred to the use of enforced disappearances as a widespread phenomenon with perpetrators shielded by political and legal impunity.[3] Between 2003 and 2006, the Army barracks of the Bhairabnath Battalion, located in Maharajguni, Kathmandu, became the main location for the illegal detention of those suspected of affiliation with the Maoist Communist Party of Nepal in the capital and where they were forcibly disappeared, tortured or summarily killed.[4]

2.3 Ms. Sharma is the sister of Himal Sharma, Secretary-General of the Maoist-affiliated political party called "All Nepal National Independent Student Union Revolutionary". The authors submit that, on 20 October 2003, she and a friend, Ms. B.M., were followed by members of the security forces dressed as civilians. She was questioned about her kinship with Mr. Sharma and was threatened with guns. The two women were handcuffed, blindfolded and dragged into a van, then taken to the Army barracks in Maharajgunj. They were deprived of any legal safeguards during the entire period of their deprivation of liberty. Ms. Sharma begged her captors to allow her to contact her two children, as her husband was outside Kathmandu. She was finally able to make a telephone call to her sons'

[1] The right to freedom of opinion and expression, the right to assembly, the right to movement, press and publication rights, the right not to be subjected to preventive detention, the right to information, the right to property, the right to privacy and the right to constitutional remedies.

[2] See Human Rights Watch and Advocacy Forum, *Waiting for Justice: Unpunished Crimes from Nepal's Armed Conflict* (New York, 2008), p. 11. See also A/HRC/7/2, p. 115.

[3] See E/CN.4/2005/65/Add.1, paras. 7–9, 25 and 27. See also www.amnesty.org/download/Documents/136000/asa310032000en.pdf.

[4] The author refers to the report of investigation of the Office of the United Nations High Commissioner for Human Rights-Nepal into arbitrary detention, torture and disappearances at Maharajgunj RNA barracks, Kathmandu in 2003-2004, available at http://nepalconflictreport.ohchr.org/files/docs/2006-05-26_report_ohchr_eng.pdf.

school and asked the principal to take care of the two children because, as she was forced to say, "she was attending a programme".

2.4 The following day, while Ms. Sharma was being interrogated, her brother Himal was brought to the room next to the one where she was being held. Ms. Sharma she could hear that he was being tortured, and she was kicked and beaten with plastic pipes.

2.5 On 24 October 2003, Ms. Sharma was taken to her apartment while the authorities searched it, and was allowed to take some clothes to her children's school and give them to the principal, without mentioning that she was under detention.

2.6 On 25 October 2003, Ms. Sharma's husband, Mr. Paudel, returned home from his village and enquired as to the whereabouts of his family. The following day, the school principal informed Mr. Paudel that his children were being kept at the school and that he had received orders from the authorities not to hand them to Mr. Paudel without permission. The children eventually returned home one month later.

2.7 On 27 October 2003, a State officer went to Ms. Sharma's apartment to search it, and informed Mr. Paudel that his wife was under arrest and would be released soon, without disclosing her whereabouts.

2.8 On 29 October 2003, as Ms. Sharma still had not been released, Mr. Paudel submitted an application to the National Human Rights Commission denouncing his wife's disappearance. The following day, he also filed a writ petition to the Supreme Court of Nepal demanding an order of habeas corpus, claiming that Ms. Sharma had been illegally detained at an unknown location.

2.9 The Supreme Court issued a cause notice against the eight respondents referred to in the writ petition. In November 2003, all public authorities concerned denied any involvement in or awareness of the disappearance of Ms. Sharma. On 25 June 2004, the Supreme Court quashed the writ petition on the grounds of lack of evidence proving Ms. Sharma's illegal detention.

2.10 On 4 February 2004, Mr. Paudel informed Amnesty International about his wife's disappearance. The organization officially requested clarifications from the Government, to which the Government did not replied.

2.11 Ms. Sharma reports that, for the first four or five months of her detention, she was routinely interrogated under duress at any time of the day or night. She was frequently beaten with sticks, subjected to falanga (foot whipping), held underwater for prolonged periods of time and threatened with rape. For most of her detention, she remained handcuffed and blindfolded, except to eat, had very limited access to water and food, which was of poor quality, could only go to the toilet once a day and was not allowed to wash herself. Two other detainees, Ms. B.M. and Mr. J.M.B., reported that Ms. Sharma had been severely beaten. On 11 March 2004, she was repeatedly subjected to the "submarino" technique until she signed a fake confession. After that, she was no longer subjected to torture, but her health deteriorated due to the poor detention conditions. In June 2004, she became severely ill and was taken to the military hospital of Chhauni on two consecutive occasions, where she was diagnosed with an ulcer. She remained in the hospital until about the middle of September 2004.

2.12 On 25 August 2004, Ms. Sharma by chance met a friend of hers while at the hospital, and secretly handed her a letter for Mr. Paudel indicating that she was being held in the Bhairabnath Battalion barracks. She asked her friend not to make the information immediately public, for fear of reprisals.

2.13 Three months after receiving the letter, and since he had not received any further news from his wife, Mr. Paudel shared the letter with members of All Nepal National Independent Student Union Revolutionary, which released a press statement on 19 November 2004 about Ms. Sharma's condition. When the letter was made public, Ms. Sharma was interrogated harshly and beaten severely with pipes over a week.

2.14 At the beginning of 2005, Ms. Sharma was moved to a small, dark room, where she was kept in isolation, blindfolded and handcuffed. She managed, however, to write on a little notebook and made an arrangement with a cook to deliver a few letters to Mr. Paudel.

2.15 On 11 February 2005, the findings of a committee headed by the Joint-Secretary of the Ministry of Home Affairs (the so-called "Malego Committee") became public and specifically mentioned Ms. Sharma as a victim of enforced disappearance.

2.16 On 12 April 2005, with the help of the National Human Rights Commission, Mr. Paudel and his eldest son were allowed to visit Ms. Sharma. On 8 June 2005 Mr. Paudel filed a new petition for habeas corpus to the Supreme Court of Nepal. On 28 June 2005, the Court ordered the immediate release of Ms. Sharma, ruling her detention as illegal. She was finally released on 30 June 2005, following the Court's order.

2.17 On the day of her release, Ms. Sharma was ordered to report to the Army barracks personally once a week on her activities. The soldiers threatened that she and her relatives would be re-arrested if she sought justice. Mr. Paudel was also warned not to mention anything about Ms. Sharma's detention. Because of those threats, neither Ms. Sharma nor her relatives undertook any steps to seek justice in the months after her release.

2.18 On 24 April 2006, the Comprehensive Peace Agreement was signed by the Government of Nepal and the Maoist Communist Party of Nepal. The Agreement bound the parties to create a truth and reconciliation commission, and the Interim Constitution, enacted in 2007, also reaffirmed that commitment and the need to provide a remedy to the victims and their families.

2.19 On 1 June 2007, the Supreme Court issued an order directing the Government to form an independent commission to investigate the status of disappeared persons and to prosecute those responsible. However, no investigations have been initiated, and no criminal or disciplinary measures have been taken against anyone identified as responsible for the alleged acts of arbitrary arrest, enforced disappearance and torture. On the contrary, from October 2008, the Government has adopted a policy of withdrawing criminal cases, leading to a large number of cases being withdrawn before the completion of criminal proceedings.

2.20 In 2008, the Ministry of Peace and Reconstruction put into place an Interim Relief Programme. On 4 June 2009, Ms. Sharma filed an application to be considered a victim of the conflict, and three days later the Chief District Officer confirmed that her application — in which she indicated that she had been disappeared from 20 October 2003 until 2005 — was correct. On 20 July 2009, the Kathmandu District Administration Office ordered the police to conduct a field enquiry into whether the applicant had been a victim of disappearance. Her disappearance was recognized and she received interim relief of 25,000 Nepalese rupees (approximately $250). She was also listed as a victim of "injuries and wounds" by a task force established by the Ministry of Peace and Reconstruction, and awarded 50,000 rupees (approximately $500).

2.21 On 14 March 2013, an executive ordinance (the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance, 2069 (2012)) was adopted providing for the establishment of a single commission of investigation into disappeared persons, although several flaws in that measure came to light, such as the lack of definition of torture or enforced disappearance and the discretion to grant amnesty. On 31 March 2013 the Supreme Court issued a stay on the implementation of the ordinance. Since then, the commission has not been established.

2.22 Seeing no prospects for justice through the establishment of a commission, Ms. Sharma tried to lodge a first information report at the Metropolitan Police Range in Kathmandu on 11 June 2013, against the perpetrators involved in her arrest, disappearance and torture. However, her report was rejected by the superior officer of the Metropolitan Police Range, on the grounds that the case related to a crime committed during the conflict, which should be resolved by the higher-level political leadership. At the insistence of her legal counsel, the police also clarified that they could not act on crimes that were not listed under annex 1 of the State Cases Act (1992), and torture was not listed as such a crime. The police refused to release any documents attesting to the rejection of the report.

2.23 On 21 July 2013, Ms. Sharma filed a complaint under the Compensation Relating to Torture Act in order to obtain compensation for the torture she had suffered. However, her

case was rejected as statute-barred, on the basis that she should had requested the compensation 35 days after the date when she was released from detention.

The complaint

3.1 The authors divide Ms. Sharma's detention into two different periods: from 20 October 2003 to 25 August 2004, when she was able to secretly write a letter to her husband; and from 25 August 2004 until she was finally released, on 30 June 2005.

3.2 The authors allege that the arbitrary arrest and detention of Ms. Sharma by State agents from 20 October 2003 to 25 August 2004 constitute enforced disappearance. Throughout that period, Nepalese authorities continuously denied any involvement in her deprivation of liberty and persistently refused to disclose her fate and whereabouts. The National Human Rights Commission, the Kathmandu Chief District Officer and the Malego Commission acknowledged that she had been subjected to enforced disappearance. The authors submit that enforced disappearances violate per se multiple human rights enshrined in the Covenant, namely articles 6, 7, 9 (1–4), 10 (1) and 16, as well as article 2 (3).[5]

3.3 The authors contend that, even if Ms. Sharma did not die during her enforced disappearance, she was put outside the protection of the law and her life was at grave risk.[6] Ms. Sharma was personally subjected to ill-treatment, and her health condition became so critical that she risked losing her life and had to be hospitalized. The State party therefore violated article 6 of the Covenant.

3.4 The authors consider that enforced disappearance constitutes in and of itself an act of torture, and a violation of article 7 of the Covenant.[7] They also submit that Ms. Sharma was repeatedly subjected to torture, both physical and psychological. Her suffering was witnessed by a number of fellow detainees and confirmed by the National Human Rights Commission. A medical examination conducted in 2011 by the Department of Forensic Medicine concluded that her injuries could have been produced by blunt force impacts, and a psychological assessment conducted during the same period certified that she was affected by depressive illness, as there had been a significant history of physical and mental torture.

3.5 The authors contend that the unacknowledged detention of any individual, as well as any incommunicado detention, constitutes a violation of article 9 (1–4) of the Covenant.[8] Ms. Sharma was held incommunicado until August 2004. During the time of her enforced disappearance, Ms. Sharma was not informed of the reasons she was being detained, and was kept in detention without charges for over the maximum legal period at the time in Nepal. She was never brought before a judge or any other official authorized by law, and she had no opportunity to challenge the lawfulness of her deprivation of liberty. Her detention was not officially registered, and her relatives and counsel were not informed of her whereabouts and were not allowed to visit her. The authors further submit that the writ of habeas corpus submitted by Mr. Paudel on 30 October 2003 was inefficient, as the concerned authorities denied their involvement in Ms. Sharma's detention. The authors consider that these facts amount to a violation of article 9 (1–4) of the Covenant by the State party.

3.6 The authors consider that enforced disappearance itself constitutes a violation of article 10 (1) of the Covenant.[9] In addition, the inhumane conditions of deprivation of

[5] The authors refer to *Bousroual v. Algeria* (CCPR/C/86/D/992/2001), para. 9.2, *El-Abani v. Libyan Arab Jamahiriya* (CCPR/C/99/D/1640/2007), para. 7.3, and *Sarma v. Sri Lanka* (CCPR/C/78/D/950/2000), para. 9.3.

[6] The authors refer to *Guezout and Rakik v. Algeria* (CCPR/C/105/D/1753/2008), para. 8.4.

[7] The authors refer to *Mojica v. Dominican Republic* (CCPR/C/51/D/449/1991), *Grioua v. Algeria* (CCPR/C/90/D/1327/2004), and *Celis Laureano v. Peru* (CCPR/C/56/D/540/1993).

[8] The authors refer to *Madoui v. Algeria* (CCPR/C/94/D/1495/2006), *Grioua v. Algeria*, and *Bautista v. Colombia* (CCPR/C/55/D/563/1993).

[9] The authors refer to *Sharma v. Nepal* (CCPR/C/94/D/1469/2006), *Sedhai v. Nepal* (CCPR/C/108/D/1865/2009), *Azouz v. Algeria* (CCPR/C/108/D/1798/2008), and *Aouali, Faraoun and Bouregba v. Algeria* (CCPR/C/109/D/1884/2009 and Corr.1).

liberty suffered by Ms. Sharma for over 10 months infringed upon her dignity, in violation of article 10 (1) of the Covenant.

3.7 The authors consider Ms. Sharma's enforced disappearance as a failure to recognize her as a person before the law insofar as the State refused to disclose her fate or whereabouts, putting her outside of the protection of the law.[10] The authors thus contend that the State party violated Ms. Sharma's rights under article 16 of the Covenant.

3.8 The authors argue that the ongoing failure of the authorities of the State party to conduct an ex officio, prompt, impartial and independent investigation into Ms. Sharma's arbitrary detention, disappearance and torture, in order to provide her with adequate remedies, and to prosecute and sanction the perpetrators, constitute a violation of article 2 (3), read in conjunction with articles 6, 7, 9 (1–4), 10 (1) and 16 of the Covenant.

3.9 While Ms. Sharma's enforced disappearance ended on 25 August 2004, when she succeeded in secretly sending a letter to her husband, her arbitrary detention continued until 30 June 2005. According to the authors, the circumstances during that period reveal a violation of articles 7, 9 (1–4) and 10 of the Covenant, read alone and in conjunction with article 2 (3).

3.10 The authors allege that Ms. Sharma was subjected to a violation of articles 7 and 10 (1) of the Covenant during that second period of detention owing to the poor detention conditions, especially taking into account her weak health after hospitalization, and because of the reprisals she was subjected to when the letter she had sent to her husband had become public. She was also placed in isolated detention for around six months until her release on 30 June 2005.

3.11 The authors also contend that the continuation of Ms. Sharma's detention after her hospitalization remained arbitrary, and that she was neither shown an arrest warrant when she was brought back from the hospital, nor accused of any crime. She was not brought before a judge, nor was she given the possibility to consult a legal counsel. In its 8 June 2005 ruling ordering the release of Ms. Sharma, the Supreme Court confirmed the arbitrariness of her detention, which amounted to a violation of article 9 (1–4) of the Covenant.

3.12 During the second period of detention, no ex officio, prompt, impartial or independent investigation was launched with reference to Ms. Sharma's arbitrary detention and ill-treatment, which the authors argue represents a continuing violation of article 2 (3), read in conjunction with articles 7, 9 and 10 (1) of the Covenant.

3.13 The authors allege that Mr. Paudel was subjected to a violation of article 7 of the Covenant owing to the anguish and distress he experienced during the enforced disappearance of his wife, and the fear for his sons' safety as well as his own. Those fears were made greater by the frequent presence of soldiers at his apartment, for the purpose of keeping a close watch on his family.

3.14 The authors contend that, in addition to the anguish and distress linked to his search for his wife, Mr. Paudel had to suffer the arbitrary presence of soldiers at his apartment and the holding of his children at Nilgagan Public School for a month against his will, all while working and taking care of the children. The threats by the Army, and Ms. Sharma's duty to report to the barracks after her release, continued to affect his family. Therefore, the enforced disappearance of his wife caused a grave disruption to his family life, in violation of articles 17 and 23 (1) of the Covenant.

3.15 Mr. Paudel submits that the existing domestic legal framework does not make it possible to claim any compensation or redress, in violation of article 2 (3), read in conjunction with articles 7, 17 and 23 (1) of the Covenant.

3.16 The authors also contend that Ms. Sharma's disappearance disrupted her eldest son's family life. Basanta Sharma Paudel missed parental attention and care, since his father had

[10] The authors refer to *Aouali, Faraoun and Bouregba v. Algeria*; *Larbi v. Algeria* (CCPR/C/108/D/1831/2008); *Azouz v. Algeria*; and *Abushaala v. Libya* (CCPR/C/107/D/1913/2009).

to work and search for his mother, and he was forced to live at his school during the first month of his mother's disappearance, without knowing why. Once he learned about his mother's disappearance, he experienced anguish and distress, which deeply affected his mood and behaviour. The common presence of soldiers at his apartment represented a constant threat. Those circumstances reveal a violation of articles 7, 17, 23 (1) and 24 (1), read alone and in conjunction with article 2(3), with regard to Basanta Sharma Paudel.

3.17 The authors further contend that no judicial remedies are available to them for the offences they suffered and that, in any case, existing procedures are ineffective. Ms. Sharma's enforced disappearance was on several occasions brought to the attention of the authorities, which never initiated any investigation in that regard. After her release, Ms. Sharma was overwhelmed by her fear of State authorities.[11] When the conflict finally ended on 26 November 2006, it was too late to submit a complaint under the 1996 Compensation Relating to Torture Act, since the 35-day statutory limitation had elapsed. In addition, the consistent police practice of rejecting complaints discouraged Ms. Sharma from submitting one.

3.18 Ms. Sharma submitted an application for interim relief and was recognized as a victim of "abduction" and afforded 25,000 rupees. She was also granted 50,000 rupees as a victim of "injuries". However, these were social assistance measures that did not cover all the aspects of reparation. Under the interim relief programme, a prima facie investigation was conducted, which confirmed the crimes reported by Ms. Sharma. However, the authorities avoided further investigations and no one was charged.

3.19 On 14 March 2013, the President of Nepal adopted the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance, 2069 (2012). However, such a commission does not exist yet, and the authors contend that it cannot be considered a remedy, since the Supreme Court issued a stay on the implementation of the Ordinance.

3.20 On 11 June 2013, the police refused to register the first information report that Ms. Sharma attempted to file because, according to the police, such report could only be submitted when the facts amounted to one of the crimes listed in Schedule 1 of the 1992 State Cases Act, which included neither torture nor enforced disappearance. As requested by law, Ms. Sharma and her counsel addressed the higher ranking officer at the Metropolitan Police Range without success and, since they were not given a formal rejection notice, they could not appeal to the Chief District Officer. Considering that the Committee had already noticed the ineffectiveness of first information reports in the past,[12] and noting that no perpetrators of gross human rights violations during the conflict period have been brought to justice, the authors contend that this remedy offers no prospects of success.

3.21 On 21 July 2013 Ms. Sharma tried to lodge a complaint under the 1996 Compensation Relating to Torture Act, which was rejected on 23 July 2013 as time-barred. The authors argue that it would have been impossible for Ms. Sharma to comply with the 35-day statutory limitation, due to the serious threats she had received upon her release. They also argue that statutes of limitations should not apply to gross violations of international human rights law[13] and that the failure to exhaust domestic remedies due to the expiration of statutory limitations that are attributable to flawed domestic legislation should not render a communication inadmissible.[14] In any event, such complaint is civil in nature and cannot lead to the prosecution of those responsible for the crimes.[15]

3.22 The authors contend that the date of rejection of the complaint under the 1996 Compensation Relating to Torture Act, that is, 23 July 2013, should be considered as the

[11] The authors refer to *Phillip v. Trinidad and Tobago* (CCPR/C/64/D/594/1992).

[12] The authors refer to *Sharma v. Nepal*.

[13] The authors refer to the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

[14] The authors refer to *JRT and the WG Party v. Canada* (CCPR/C/OP/2).

[15] The authors refer to *Benaziza v. Algeria*.

latest relevant date to take into account when assessing the compatibility of the current communication with article 96 (c) of the rules of procedure of the Committee. They also argue that the measures they have taken show beyond any doubt that they have been proactive in seeking justice.

3.23 The authors request the Committee to recommend that the State party: (a) bring the perpetrators of Ms. Sharma's arbitrary deprivation of liberty, torture and enforced disappearance before the competent ordinary authorities for prosecution, judgment and sanction, and disseminate publicly the results of those measures; (b) immediately suspend from office all army officials against whom there is prima facie evidence of involvement in the crimes against Ms. Sharma, pending the outcome of the investigation; (c) amend the Commission on Investigation of Disappeared Persons, Truth and Reconciliation Ordinance adopted on 14 March 2013 in order to make sure that no person accused of gross human rights violations, including torture, enforced disappearance and arbitrary killing, may benefit from any amnesty provision exempting him or her from criminal responsibility; (d) ensure that the authors obtain integral reparation and prompt, fair and adequate compensation; and (e) ensure that the measures of reparation cover material and moral damages, and that measures of restitution, rehabilitation, satisfaction and guarantees of non-repetition are issued. In particular, they request the State party to acknowledge its international responsibility, by way of a public ceremony conducted in the presence of the authorities and of the authors to whom official apologies shall be issued. The State party should also provide the authors with medical and psychological care immediately and free of charge, through its specialized institutions, and grant them access to free legal aid where necessary, in order to provide them with effective and sufficient remedies. As a guarantee of non-repetition, the State party should take the measures necessary to ensure that enforced disappearance and torture, and the different forms of participation in those crimes, constitute autonomous offences under its criminal law, punishable by appropriate penalties that take into account their extreme seriousness. Finally, the State party should establish as soon as possible educational programmes on international human rights law and international humanitarian law for all members of the Army, the security forces and the judiciary.

State party's observations on admissibility

4.1 In a note verbale dated 23 May 2014, the State party submitted its observations, challenging the admissibility of the communication on the grounds of lack of substantiation and failure to exhaust domestic remedies, and requested the Committee to examine the admissibility separately from the merits.

4.2 The State party maintains that Ms. Sharma was arrested and detained in accordance with the provisions of the prevailing law of Nepal and, during her detention, she was treated humanely. Medical facilities were provided to her at Birendra Military Hospital, and while in detention, she was visited by her family members, whose visit was recorded officially. She was released in the presence of her husband on 30 June 2005. Hence her detention was not an act of enforced disappearance. The State party notes that the state of emergency was in force at the time of Ms. Sharma's arrest and detention.

4.3 The State party also maintains that the authors' allegations that Ms. Sharma was tortured while in detention are not supported by any evidence. If she had been tortured, she should have sought remedy as provided in the Compensation Relating to Torture Act. According to the State party, it is not logical to argue that she could not file a case because the statute of limitation had elapsed. The State party has also categorically refuted the reports of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Working Group on Enforced or Involuntary Disappearances that torture was systematically practised by the police and the Nepalese Army.

4.4 Ms. Sharma filed a petition with the National Human Rights Commission and received 161,000 rupees as per the recommendation of the Commission. The Government provided 25,000 additional rupees as interim relief. The Commission has been empowered by the Supreme Court to forward its recommendations to file cases on violations of human rights, and the Attorney General has an obligation to prosecute those cases. The authors may be entitled to receive reparations in accordance with the investigation and recommendation of the Commission in relation to the transitional justice mechanism.

4.5 In line with the Constitution and the Comprehensive Peace Agreement, Parliament enacted the Disappearance, Truth and Reconciliation Commission Act, which has paved the way for the establishment of the Commission of Investigation on Enforced Disappearance and the Truth and Reconciliation Commission. Hence, the State party does not consider it appropriate to continue to consider the present communication, as the transitional justice mechanism is in the process of being established. The Government is also in the process of criminalizing torture and enforced disappearance. According to the State party, the ordinary criminal justice system cannot be used effectively to seek the truth, prosecute perpetrators and provide reparations to victims of human rights violations committed during the armed conflict.

Authors' comments on the State party observations on admissibility

5.1 On 3 June 2014, the authors submitted their comments on the State party's observations. They noted that the State party did not challenge the violations with regard to Messrs Bijaya and Basanta Sharma Paudel. As regards Ms. Sharma, the authors contend that the State party also presented arguments on the merits and therefore consider it necessary to address some of its allegations. The authors argue that the Committee should consider the reply submitted on 23 May 2014 by the State party as related both to the merits and the admissibility of the complaint and proceed to adopt its Views.

5.2 With regard to the argument of the State party that Ms. Sharma's arrest and detention were not arbitrary, the authors refer to their communication, in which they described in detail how she had been arbitrarily deprived of her liberty and held in unacknowledged and incommunicado detention. The authors argue that the State party did not clarify the provisions pursuant to which Ms. Sharma was arrested, and did not rebut the fact that Ms. Sharma was not informed of the reasons for her arrest, was not allowed to contact her family or legal representative and could not challenge the lawfulness of her detention as she was never brought before a judge or other officer authorized by law. The fact that Ms. Sharma obtained medical attention at the military hospital was never challenged by the authors, but she was only given access to that medical care in June 2004, more than eight months after her arrest. The authors also do not contend that Ms. Sharma was released in the presence of her husband on 30 June 2005, but her release did not change the fact that, between 20 October 2004 and 25 August 2004, she was held incommunicado. In fact, her release followed an order of the Supreme Court of Nepal, which affirmed that her detention had been illegal. The National Human Rights Commission and the Kathmandu District Administrative Office also affirmed that Ms. Sharma had been subjected to enforced disappearance.

5.3 With regard to the State party's contention that the authors did not provide evidence that Ms. Sharma was tortured, the authors refer to the details provided in their communication, the declarations made by witnesses and the evidence of the physical and psychological impairment suffered as a consequence of the treatment to which Ms. Sharma was subjected. The authors argue that torture is not yet defined in Nepalese law and is not a criminal offence. The State party does not challenge the fact that Ms. Sharma was subjected to incommunicado detention and that she endured inhumane conditions throughout her entire period of detention. The burden of proof should not rest alone on the authors of the communication, considering that the authors and the State party do not have equal access to the evidence.[16] In addition, being subjected to prolonged incommunicado detention in an unknown location amounts to torture, as the Committee has affirmed in the past.[17] Furthermore, the authors argue that the widespread and systematic use of torture in Nepal has also been confirmed by the Committee against Torture pursuant to its enquiry procedure.[18]

5.4 The authors do not contest that Ms. Sharma obtained interim relief, but assert that this was only a temporary measure that must be complemented by other measures aimed at granting integral reparation. Interim relief does not even amount to fair and adequate compensation for the harm suffered. The State party does not contend that the authors never

[16] The authors refer to *Hugo Dermit Barbato v. Uruguay* (CCPR/C/OP/2).

[17] The authors refer to *Sedhai v. Nepal*.

[18] See A/67/44, annex XIII, paras. 1-130.

received any other form of reparation, but rather indicated that they would be entitled to reparation as per the recommendation of the transitional justice mechanism.

5.5 With regard to the fact that Ms. Sharma did not file a timely petition under the Compensation Relating to Torture Act, the authors argue that the 35-day statutory limitation is not in line with international standards. In that connection, they recall that the Committee already found in a previous case that the 35-day statute of limitation was excessively strict[19] and could not be considered an effective remedy to be exhausted. In addition, filing a complaint within 35 days from the infliction of torture would have been impossible, since Ms. Sharma was being held incommunicado.

5.6 With regard to the transitional justice mechanism to be set up in the future, the authors contend that they cannot be requested to exhaust a remedy that does not exist in reality and that it would be impossible to assess if and when it will eventually be set up. Furthermore, the Committee held in the past that it is not necessary to exhaust avenues before non-judicial bodies.[20] In addition, the Truth and Reconciliation Commission Act, approved on 11 May 2014, breaches international law under several counts: (a) the Commission has excessive power to conduct mediation in cases of gross human rights violations and the prohibition of any legal action in those cases; (b) the Commission has discretionary power to recommend amnesties; (c) offences that are recognized as crimes under international law are not criminalized in the State party; (iv) victims' right to reparations is not recognized in the State party. Thus, it cannot be considered an effective remedy.

5.7 The authors also contend that the prosecution of those responsible for gross human rights violations should not be conditioned upon the previous creation of a transitional justice mechanism, particularly where the identity of the perpetrators is known and has been reported to the Nepalese authorities.[21]

State party's observations on the merits

6.1 On 12 September 2014, the State party submitted its observations on the merits. It argues that Ms. Sharma was arrested under the Terrorist and Disruptive Activities (Prevention and Punishment) Act, 2002, at the time when the country was in a state of emergency.

6.2 The State party reiterates that the authors have not been able to provide evidence of the allegations of torture. It also reiterates that it is committed to establishing a transitional justice mechanism, and submits that the Government of Nepal has constituted a Ministry of Peace and Reconciliation, which has framed various guidelines, procedures and manuals to deliver reparation to victims. Interim relief was provided in an initial package to conflict victims, who have a right to receive adequate compensation and reparation after the investigation of their cases, as per the recommendations of the Truth and Reconciliation Commission. A Recommendation Committee headed by the former Chief Justice of the Supreme Court has been constituted, which will recommend individuals to be appointed as members of the Commission on Investigation of Enforced Disappearance and the Truth and Reconciliation Commission.

6.3 The State party finally argues that the authors have failed to exhaust domestic remedies and that the matters at hand can be addressed through the transitional justice mechanism.

Authors' comments on the State party's observations on the merits

7.1 On 4 December 2014, the authors submitted their comments on the State party's observations on the merits. Regarding the non-exhaustion of domestic remedies, they reiterated their arguments presented on 6 June 2014.

7.2 The authors note that the State party does not challenge the allegations concerning the violations of articles 7, 9, 10 and 16 in connection with article 2 (3) with regard to Ms.

[19] The authors refer to *Giri v. Nepal* (CCPR/C/101/D/1761/2008 and Corr.1).

[20] The authors refer to *Katwal v. Nepal* (CCPR/C/113/D/2000/2010).

[21] The authors refer to CCPR/C/NPL/2, para. 5(a) (b).

Sharma, and of articles 7, 17, 23 and 24 — alone and in conjunction with article 2 (3) — with regard to Basanta Sharma Paudel. Therefore, the authors understand that the State party does not contend the facts as reported by the authors in their allegations. With regard to the alleged violations of articles 7, 17 and 23, read alone and in conjunction with article 2 (3) of the Covenant, which were invoked with regard to Bijaya Sharma Paudel, the State party affirmed that "it would like to challenge the allegations" but did not provide any concrete argument in that regard.

7.3 The authors note that the State party's responses to the allegations of arbitrary arrest, detention and enforced disappearance and of torture of Ms. Sharma are almost identical to the ones provided on 23 May 2014. Therefore, they refer the Committee to the arguments included in their reply of 4 June 2014. The authors clarified, however, that besides the 161,000 rupees and the 25,000 rupees received as interim relief, Ms. Sharma also obtained 60,000 rupees as interim relief from the District Administration Office of Parbat. They reiterate, however, that interim relief does not constitute an adequate remedy commensurate to the serious violations inflicted.[22] They argue that, since the State party's reply with regard to the transitional justice mechanism is essentially the same in content as the previous response of 23 May 2014, they also refer to their reply of 4 June 2014. The authors further refer to the recent findings of the Committee with regard to the prospective transitional justice mechanisms, which are not judicial organs, and as such cannot be considered as effective remedies.[23] In the absence of any satisfactory evidence from the State party to contend their credible and detailed allegations, the authors submit that the Committee should consider their submissions as fully substantiated.

Issues and proceedings before the Committee

Consideration of admissibility

8.1 Before considering any claim contained in a communication, the Committee must decide, in accordance with rule 93 of its rules of procedure, whether the claim is admissible under the Optional Protocol.

8.2 The Committee has ascertained, as required under article 5 (2) (a) of the Optional Protocol, that the same matter is not being examined under another procedure of international investigation or settlement.

8.3 With respect to the requirement of exhaustion of domestic remedies, the Committee notes the State party's arguments that the authors have not exhausted domestic remedies, as they have failed to register a complaint under the 1996 Compensation Relating to Torture Act mechanism; and that the case should be addressed within the transitional justice mechanism, established in conformity with the Interim Constitution of 2007 and the Act on the Commission on Investigation of Enforced Disappearance, Truth and Reconciliation, 2071 (2014). The Committee also notes the authors' allegations that the Compensation Relating to Torture Act does not provide for criminal accountability; that the statutory limitation prevented Ms. Sharma from using this mechanism while she was held incommunicado and, once she was released, she did not submit a complaint owing to the serious threats she had received; that the 35-day statutory limitation is not consistent with the gravity of the offence and is not in line with international standards; and that transitional justice mechanisms do not replace access to justice and cannot be considered as an effective remedy to be exhausted. The Committee observes that, on 29 October 2003, Mr. Paudel submitted an application to the National Human Rights Commission denouncing his wife disappearance and, on 30 October 2003, he filed a writ of habeas corpus before the Supreme Court that did not shed light on the whereabouts of Ms. Sharma. On 11 June 2013, Ms. Sharma attempted to file a complaint with the Kathmandu Metropolitan Police Range, but the latter refused to register it.

[22] The authors refer to *Bhandari v. Nepal* (CCPR/C/112/D/2031/2011); *Tripathi v. Nepal* (CCPR/C/112/D/2111/2011); and *Basnet and Basnet v Nepal* (CCPR/C/112/D/2051/2011).

[23] The authors refer to *Tripathi v. Nepal*.

8.4 The Committee recalls its jurisprudence that, in cases of serious human rights violations such as torture or enforced disappearance, a judicial remedy is required.[24] In that connection, the Committee observes that the transitional justice bodies established by the Act on Commission on Investigation of Disappeared Persons, Truth and Reconciliation, 2071 (2014) are not judicial organs capable of affording a judicial remedy.[25] With regard to the remedy under the Compensation Relating to Torture Act 1996, the Committee observes that, according to article 5 (1) of the Act, claims for compensation must be submitted within 35 days from the event of torture or after a detainee's release. The Committee therefore considers that, because of the 35-day statutory limit from the event of torture or the date of release for bringing claims under the Compensation relating to Torture Act, which is in itself flagrantly inconsistent with the gravity of the crime, this remedy was not available to the authors. The Committee also notes that the authors have made several attempts to report the violations they suffered and that they reported their case to the Supreme Court on two occasions. Accordingly, the Committee considers that the authors have exhausted all available domestic remedies and that there are no obstacles to the examination of the communication under article 5 (2) (b) of the Optional Protocol.

8.5 The Committee notes the State party's observations that the authors' allegations have not been substantiated. The Committee considers, however, that for the purposes of admissibility, the authors have sufficiently substantiated their allegations with plausible arguments in support thereof. As all admissibility requirements have been met, the Committee declares the communication admissible and proceeds to its examination on the merits.

Consideration of merits

9.1 The Committee has considered the present communication in the light of all the information made available to it by the parties, as required under article 5 (1) of the Optional Protocol.

9.2 The Committee notes the authors' allegations that Ms. Sharma was subjected to an enforced disappearance from 20 October 2003 to 25 August 2004, and from that date until the date of her release (30 June 2005) she was subjected to arbitrary detention, torture and ill-treatment. Her release followed an order of the Supreme Court of Nepal, which affirmed that her detention had been illegal, and the National Human Rights Commission and the Kathmandu District Administrative Office also affirmed that Ms. Sharma had been subjected to enforced disappearance.

9.3 The Committee notes the State party's argument that the authors' allegations have not been substantiated and that Ms. Sharma was arrested under the provision of the Terrorist and Disruptive Activities (Prevention and Punishment) Act, 2002.

9.4 The Committee notes that it has dealt with numerous cases in respect of similar practices in a number of earlier communications concerning the same State party.[26] In line with those precedents, the Committee reaffirms its position that the burden of proof cannot rest solely on the authors of the communication, especially considering that the authors and the State party do not always have equal access to evidence, and that frequently the State party alone has access to the relevant information.[27] It is implicit in article 4 (2) of the

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[24] See *Giri v. Nepal*, para. 6.3; and *Neupane and Neupane v. Nepal* (CCPR/C/120/D/2170/2012), para. 9.3.

[25] See *Neupane and Neupane v. Nepal*, para. 9.3; *Tharu and others v. Nepal* (CCPR/C/114/D/2038/2011), para. 9.3; *Basnet v. Nepal* (CCPR/C/117/D/2164/2012), para. 9.3; *Nakarmi v. Nepal* (CCPR/C/119/D/2184/2012), para. 10.3; and *Dhakal and others v. Nepal* (CCPR/C/119/D/2185/2012), para. 10.3.

[26] See *Himal and Devi Sharma v. Nepal* (CCPR/C/WG/122/DR/2364/2014); *Neupane and Neupane v. Nepal*; *Aniya v. Nepal* (CCPR/C/119/D/2245/2013); *Basnet v. Nepal*; *A.S. v. Nepal* (CCPR/C/115/D/2077/2011); *Tharu and others v. Nepal*; *Sharma v. Nepal*; *Sedhai v. Nepal*; *Maharjan v. Nepal* (CCPR/C/105/D/1863/2009); *Giri v. Nepal*; *Tripathi v. Nepal*; and *Katwal v. Nepal*.

[27] See *El Hassy v. Libyan Arab Jamahiriya* (CCPR/C/91/D/1422/2005), para. 6.7; *Medjnoune v. Algeria* (CCPR/C/87/D/1297/2004), para. 8.3; *Il Khwildy v. Libya* (CCPR/C/106/D/1804/2008), para. 7.2; *Basnet*

Optional Protocol that the State party has the duty to investigate in good faith all allegations of violations of the Covenant made against it and its representatives, and to provide the Committee with the information available to it. In cases where the author has submitted allegations to the State party that are corroborated by credible evidence, and where further clarification depends on information that is solely in the hands of the State party, the Committee may consider the author's allegations substantiated, in the absence of satisfactory evidence or explanations to the contrary presented by the State party.

9.5 The Committee recalls that, while the Covenant does not explicitly use the term "enforced disappearance" in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represent continuing violation of various rights recognized in that treaty.[28]

9.6. In the present case, the Committee notes the State party's allegation that Ms. Sharma was arrested under the provision of the Terrorist and Disruptive Activities (Prevention and Punishment) Act, 2002, but the State party has not clarified on which date, pursuant to which provisions or on which grounds. The State party has not challenged the authors' allegations concerning the arbitrary character of Ms. Sharma's arrest without a warrant on 20 October 2003. The Committee observes that promptly after Mr. Paudel became aware of his wife's disappearance, he submitted an application to the National Human Rights Commission and a writ of habeas corpus on 30 October 2003. It also notes that the detention of Ms. Sharma at Maharajgunj is corroborated by the statement of other co-detainees. According to the Malego Committee, she was a victim of enforced disappearance. It further observes that, in the context of the habeas corpus proceedings before the Supreme Court, all authorities, including the Bhairabnat Battalion, denied that Ms. Sharma had ever been detained. The Committee notes that, on 4 February 2004, Amnesty International requested the Government to provide clarifications concerning the fate and whereabouts of Ms. Sharma, among other disappeared persons, but never received a reply. It also notes that Mr. Paudel was only informed of the whereabouts of his wife through a letter that she had managed to send him secretly through a friend whom she had met by chance while she was in the hospital, and then through a cook at Maharajgunj. However, the State party never produced any evidence as to the whereabouts of Ms. Sharma that would have made it possible to locate her if she had not managed to send her letters to her husband. The Committee therefore considers that Ms. Sharma's deprivation of liberty from 20 October 2003 to 25 August 2004, followed by the authorities' refusal to acknowledge it and the concealment of her fate, constituted an enforced disappearance.

9.7 The Committee recalls that, in cases of enforced disappearance, the deprivation of liberty followed by a refusal to acknowledge the deprivation of liberty, or by concealment of the fate of the disappeared person, removes the person from the protection of the law and places his or her life at serious and constant risk, for which the State is accountable.[29] In the present case, the State party has produced no evidence to show that, from 20 October 2003 to 25 August 2004, while Ms. Sharma was held in incommunicado detention, it met its obligations to protect her life. Accordingly, the Committee concludes that the State party failed in its duty to protect Ms. Sharma's life, in violation of article 6 (1) of the Covenant.[30]

9.8 The Committee notes the authors' allegations that the detention and subsequent enforced disappearance of Ms. Sharma amount per se to treatment contrary to article 7. The Committee recognizes the degree of suffering involved in being held indefinitely without contact with the outside world. It recalls its general comment No. 20 (1992) on the prohibition of torture or other cruel, inhuman or degrading treatment or punishment, which recommends that States parties should make provision to ban incommunicado detention. In the present case, the Committee notes the authors' allegations that Ms. Sharma was kept

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v. Nepal, para. 10.3; *Nakarmi v. Nepal*, para. 11.4; *Dhakal and others v. Nepal*, para. 11.4; and *Neupane and Neupane v. Nepal*, para. 10.4.

[28] See *Katwal v. Nepal*, para. 11.3; *Serna et al. v. Colombia* (CCPR/C/114/D/2134/2012), para. 9.4; *Basnet v. Nepal*, para. 10.4; *Nakarmi v. Nepal*, para. 11.5; *Dhakal and others v. Nepal*, para. 11.5; and *Neupane and Neupane v. Nepal*, para. 10.5.

[29] See *Abushaala v. Libya*, para. 6.2; *Basnet v. Nepal*, para. 10.5; *Nakarmi v. Nepal*, para. 11.6; *Dhakal and others v. Nepal*, para. 11.6; and *Neupane and Neupane v. Nepal*, para. 10.6.

[30] See *Il Khwildy v. Libya*, para. 7.12.

incommunicado between 20 October 2003 and 25 August 2004. It also notes the authors' allegations that Ms. Sharma was tortured, and the evidence provided in support of those allegations.[31] The Committee further notes the authors' claim that, between 25 August 2004 and 30 June 2005, Ms. Sharma's conditions of detention remained very harsh, as she continued to be handcuffed and blindfolded, and was placed in isolated detention until her release. She was also subjected to reprisals when the letter she sent to her husband became public on 19 November 2004. Taking into account that the State party has not challenged the fact that Ms. Sharma was subjected to incommunicado detention and has not provided evidence to clarify the facts regarding Ms. Sharma's treatment while in detention, the Committee finds that the enforced disappearance and the incommunicado detention of Ms. Sharma, the acts of torture to which she was exposed as well as her conditions of detention, reveal singular and cumulative violations of article 7 of the Covenant.[32] Having reached that conclusion, the Committee will not examine the claims regarding the alleged violation of article 10 (1) of the Covenant for the same facts.

9.9 The Committee notes the authors' allegation under article 9 (1–4) of the Covenant that Ms. Sharma was arrested on 20 October 2003 without a warrant and without being informed of the reasons of her arrest. The State party has not challenged the fact that she was held in unacknowledged and incommunicado in the Bhairabnath Battalion barracks, that she was not brought before a judge or any other official authorized by law to exercise judicial power, and that she was unable to bring proceedings before a court to challenge the lawfulness of her detention. The Committee also notes the authors' position that Ms. Sharma's detention after her hospitalization remained arbitrary, since the conditions of her detention remained unchanged, she was not brought before a judge and was unable to consult a legal counsel. Therefore, the Committee considers that the enforced disappearance of Ms. Sharma from 20 October 2003 to 25 August 2004, and her arbitrary detention between 25 August 2004 and 30 June 2005, amount to a violation of her rights under article 9 (1–4) of the Covenant.[33]

9.10 The Committee is of the view that the intentional removal of a person from the protection of the law constitutes a refusal to recognize that person as a person before the law, in particular if the efforts of his or her relatives to obtain access to effective remedies have been systematically impeded.[34] The Committee, therefore, finds that the enforced disappearance of Ms. Sharma deprived her of the protection of the law and of her right to recognition as person before the law, in violation of article 16 of the Covenant.

9.11 The Committee notes the anguish and distress caused to Messrs Bijaya and Basanta Sharma Paudel by the disappearance of Ms. Sharma. The Committee observes that, during that period, Bijaya Paudel had to work, look after and bring up his two children alone, and try to locate Ms. Sharma and obtain her release. Messrs Bijaya and Basanta Sharma Paudel were frightened for their own safety. Those fears were made greater by the frequent presence of soldiers at their apartment. The Committee observes that the State party has not provided any argument to refute the allegations relating to the anguish and distress caused to Messrs Bijaya and Basanta Sharma Paudel by the disappearance of Ms. Sharma. In the particular circumstances of the present case, the Committee therefore considers that the facts before it also reveal a violation of article 7 of the Covenant with regard to Messrs Bijaya and Basanta Sharma Paudel. In the light of the above findings, the Committee will not examine separately the authors' allegations under articles 17, 23 (1) and 24 (1) of the Covenant.[35]

9.12 As to the authors' allegations under article 2 (3) of the Covenant, which imposes on States parties the obligation to ensure an effective remedy for all persons whose rights under the Covenant have been violated, the Committee recalls that it attaches importance to

[31] See the declarations of co-detainees and the medical evidence of the physical and psychological impairments suffered by Ms. Sharma as a consequence of the violations she was subjected to.

[32] See *Sedhai v. Nepal*, para. 8.3.

[33] See *Neupane and Neupane v. Nepal*, para. 10.9; *Basnet and Basnet v. Nepal*, para. 8.5.

[34] See *Basnet v. Nepal*, para. 10.9; *Tharu and others v. Nepal*, para. 10.9; *Serna et al v. Colombia*, para. 9.5.; *Nakarmi v. Nepal*, para. 11.10; *Dhakal and others v. Nepal*, para. 11.10; and *Neupane and Neupane v. Nepal*, para. 10.10.

[35] See *Tharu and others v. Nepal*, para. 10.11.

the establishment by States parties of appropriate judicial and administrative mechanisms for addressing claims of human rights violations.[36] The Committee refers to its general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant, which provides, inter alia, that failure by a State party to investigate allegations of violations could, in and of itself, give rise to a separate breach of the Covenant. In the present case, the Committee observes that Ms. Sharma did not have access to an effective remedy while in detention and after her release. During her detention, Bijaya Paudel submitted an application to the National Human Rights Commission and filed a writ of habeas corpus before the Supreme Court, which quashed his petition on 25 June 2004. On 8 June 2005 Mr. Paudel submitted another habeas corpus petition to the Supreme Court, which ordered the release of Ms. Sharma on 28 June 2005. Despite the authors' efforts, and the recognition by the National Human Rights Commission and the Kathmandu District Administrative Office that Ms. Sharma had been subjected to enforced disappearance, as well as the Supreme Court mandamus order directing the Government to investigate and provide appropriate reparations to victims of disappearances, no thorough and effective investigation has been concluded by the State party in order to elucidate the circumstances surrounding Ms. Sharma's detention and enforced disappearance, and no criminal investigation has even been started to bring the perpetrators to justice. In addition, the 246,000 Nepalese rupees received by Ms. Sharma as interim relief does not constitute an adequate remedy commensurate to the serious violations inflicted. Messrs Bijaya and Basanta Sharma Paudel never received any form of redress nor interim relief. Accordingly, the Committee concludes that the facts before it reveal a violation of article 2 (3), in conjunction with articles 6, 7, 9 (1–4) and 16, with regard to Ms. Sharma; and article 2 (3), read in conjunction with article 7 of the Covenant, with respect to Messrs Bijaya and Basanta Sharma Paudel.

10. The Committee, acting under article 5(4), of the Optional Protocol, is of the view that the information before it discloses a violation by the State party of articles 6, 7, 9 (1–4) and 16, read alone and in conjunction with article 2 (3) of the Covenant, with regard to Ms. Sharma; and a violation of article 7, read alone and in conjunction with article 2 (3), with respect to Messrs Bijaya and Basanta Sharma Paudel.[37]

11. In accordance with article 2 (3) (a) of the Covenant, the State party is under an obligation to provide individuals whose Covenant rights have been violated with an effective remedy. Accordingly, the State party is obligated to, inter alia: (a) conduct a thorough and effective investigation into the facts surrounding the detention of Ms. Sharma and the treatment she suffered in detention; (b) prosecute, try and punish those responsible for the violations committed and make the results of such measures public; (c) provide the authors with detailed information about the results of the investigation; (d) ensure that any necessary and adequate psychological rehabilitation and medical treatment is provided to the authors; and (e) provide effective reparation, including adequate compensation and appropriate measures of satisfaction to the authors for the violations suffered. The State party is also under an obligation to take steps to prevent the occurrence of similar violations in the future. In particular, the State party should ensure that its legislation: (a) criminalizes torture and enforced disappearance and provides for appropriate sanctions and remedies commensurate with the gravity of the crimes; (b) guarantees that such cases give rise to a prompt, impartial and effective investigation;[38] (c) allows for the criminal prosecution of those found responsible for such crimes; and (d) amends the 35-day statutory limit for claiming compensation for torture, in accordance with international standards.

12. Bearing in mind that, by becoming a party to the Optional Protocol, the State party has recognized the competence of the Committee to determine whether there has been a violation of the Covenant and that, pursuant to article 2 of the Covenant, the State party has undertaken to ensure for all individuals within its territory or subject to its jurisdiction the rights recognized in the Covenant and to provide an effective and enforceable remedy when a violation has been established, the Committee wishes to receive from the State party, within 180 days, information about the measures taken to give effect to the Committee's

[36] See *Neupane and Neupane v. Nepal*, para. 10.11.

[37] See *El-Abani et al v. Libyan Arab Jamahiriya*, para. 7.5; and *Emina Kožljak and Sinan Kožljak v. Bosnia and Herzegovina* (CCPR/C/112/D/1970/2010), para. 9.6.

[38] See *Neupane and Neupane v. Nepal* (CCPR/C/120/D/2170/2012), para 11.

Views. The State party is also requested to publish the present Views and disseminate them widely in the official languages of the State party.